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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE COMPLAINT
OF REBECCA SIGETI,

Complainant,

v.

PAYSON WATER COMPANY,

Respondent.

DOCKET NO: W-03514A-08-0047

ANSWER AND MOTION TO DISMISS

Payson Water Company ("Payson Water" or "Respondent") hereby files this Answer and Motion to Dismiss, pursuant to A.A.C. R14-3-106.H, in the above-captioned matter. In her formal complaint, Rebecca Sigeti ("Complainant") fails to state facts sufficient to support a cause of action for which the Arizona Corporation Commission ("Commission") can grant relief. Therefore, Payson Water respectfully requests that the Commission dismiss the Complaint.

ANSWER

1. Respondent affirms that Ms. Sigeti is a customer of Payson Water Company.

2. Respondent affirms that a meeting which included representatives of Payson Water, Commission Staff and customers took place at the Geronimo Estates Fire Hall on November 10, 2007.

3. Respondent denies the allegation that its representative, Myndi Brogdon,

1 has thus far failed to follow up on several “tasks” that were “assigned” to her at the
2 November 10, 2007 meeting.

3 4. Respondent affirms that Ms. Sigeti has filed a Motion to Intervene in
4 Docket No. W-03514A-07-0386, and that a ruling on this motion has not yet been issued.

5 5. Respondent denies the allegation that Payson Water stated that another
6 meeting has taken place in the Motion to Dismiss (“Motion”) filed in Docket No. W-
7 03514A-07-0386. A careful reading of the Motion at ¶ 8 demonstrates that Respondent
8 has *agreed to meet* with customers once again – not that a second meeting has taken place.
9 Myndi Brogdon has informed Ms. Sigeti that Payson Water is available to discuss any
10 outstanding issues.

11 6. Respondent denies that there exists any “storage and water” issue that
12 requires resolution.

13 AFFIRMATIVE DEFENSES

14 7. Complainant fails to state a claim upon which relief can be granted.

15 8. The issues raised by Complainant are currently before the Commission
16 based on her Motion to Intervene filed in Docket No. W-03514A-07-0386. Therefore,
17 allowing the Complaint to move forward would be duplicative, not serve judicial
18 economy and be unduly burdensome on the Commission’s and Respondent’s resources.

19 9. Respondent reserves the right to assert all additional affirmative defenses
20 available as more information becomes known, including all affirmative defenses set forth
21 in Rule 8(c) of the Arizona Rules of Civil Procedure.

22 MOTION TO DISMISS

23 10. The defense of failure to state a claim for which relief can be granted may
24 be asserted in a motion to dismiss. *See* Ariz. R. Civ. P. 12(b). Dismissal for failure to
25 state a claim is appropriate when, “as a matter of law ... plaintiff[] would not be entitled
26 to relief under any interpretation of the facts susceptible to proof.” *Rowland v. Kellogg*

1 *Brown & Root, Inc.*, 210 Ariz. 530, 534, 115 P.3d 124, 128 (App. 2005), *quoting Fidelity*
2 *Sec. Life Ins. Co. v. State Department of Insurance*, 191 Ariz. 222, 954 P.2d 580, 582
3 (1998). The non-moving party should be given an opportunity to amend the complaint
4 only if an amendment would cure its defects. *Wigglesworth v. Mauldin*, 195 Ariz. 432,
5 439, 990 P.2d 26, 33 (App. 1999).

6 11. The Complainant fails to state a claim for which the Commission can grant
7 relief. There is no allegation of any violation by Payson Water of Arizona law, or any
8 rule, regulation or order of the Commission

9 **RELIEF REQUESTED**

10 Having answered the Complaint and submitted the Motion, Respondent
11 respectfully requests that the Commission dismiss the Complaint, and order any other
12 such relief that it deems appropriate in this matter.

13 RESPECTFULLY SUBMITTED this 14th day of February, 2008.

14 FENNEMORE CRAIG, P.C.

15
16
17 By 

18 Jay L. Shapiro
19 Patrick J. Black
20 3003 North Central Avenue, Suite 2600
21 Phoenix, Arizona 85012
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23 **ORIGINAL** and thirteen (13) copies
24 of the foregoing filed this 14th day of February, 2008:

25 Docket Control
26 Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

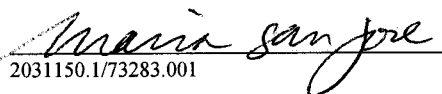
1 **Copy of the foregoing hand delivered**
2 this 14th day of February, 2008 to:

3 Dwight Nodes, Assistant Chief Administrative Law Judge
4 Hearing Division
5 Arizona Corporation Commission
6 1200 West Washington
7 Phoenix, Arizona 85007

8 Bradley Morton, Consumer Services
9 Utilities Division
10 Arizona Corporation Commission
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13 **Copy of the foregoing mailed**
14 this 14th day of February, 2008 to:

15 Rebecca Sigeti
16 HC 7 Box 451
17 Payson, Arizona 85541

18 
19 2031150.1/73283.001